

## ORDINANCE NO. 10-1013

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### AN ORDINANCE OF THE CITY OF OREGON CITY ADOPTING A NEW CHAPTER OF THE OREGON CITY MUNICIPAL CODE TO AUTHORIZE EXCLUSIONS FROM PUBLIC BUILDINGS

**WHEREAS**, the Oregon City Commission is concerned for the safety and well being of city staff, residents and patrons at city facilities; and

**WHEREAS**, certain persons have demonstrated themselves to be threats to the continued peace and good order at city facilities by threatening and intimidating city staff and patrons; and

**WHEREAS**, an ordinance authorizing the temporary exclusion of persons who have exhibited certain behaviors that threaten or intimidate other persons would contribute to the safety and well being of staff and residents; and

**WHEREAS**, the City is concerned that such exclusions could result in difficulties to persons, given the role of city facilities in everyday life, but believes that such difficulties can be overcome through the use of hearings, variances and exemptions that would ensure that due process is followed and that no essential activities would be curtailed.

### **NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:**

**Section 1.** The following Chapter 9.28 is added to Title 9 of the Oregon City Municipal Code and made a part thereof:

#### Chapter 9.28 Exclusion from Public Building

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#### **9.28.010 Definitions.**

A. For the purposes of this chapter, the following definitions apply:

1. Arrest: to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense.
2. Essential needs: food, physical care, and medical attention.
3. Reside: to occupy one's principal dwelling; including transient occupancy in a hotel or motel.

4. Travel: the movement on foot or within or upon a vehicle from one point to another without delay other than to obey traffic control devices.

5. Public Building: a building owned by a governmental entity that is generally open to the public. The term "public building" includes at least the following buildings - the Oregon City City Hall, Oregon City Library, Pioneer Center and the Oregon City Swimming Pool.

#### **9.28.020 Civil Exclusion.**

A. A person is subject to exclusion under the process described in this chapter for a period of up to ninety (90) days from any specified public building if that person has been arrested and either cited to appear in court for charging or lodged in jail for presentation to a judge for charging based upon probable cause to believe that the person has committed any of the following offenses within a public building:

1. Menacing, in violation of ORS 163.190;
2. Assault in the fourth degree, in violation of ORS 163.160;
3. Assault in the third degree, in violation of ORS 163.165;
4. Assault in the second degree, in violation of ORS 163.175;
5. Assault in the first degree, in violation of ORS 163.185;
6. Recklessly endangerment of another person, in violation of ORS 163.195;
7. Criminal trespass in the second degree, in violation of ORS 164.245;
8. Criminal trespass in the first degree, in violation of ORS 164.255;
9. Harassment, in violation of ORS 166.065;
10. Disorderly conduct in the first degree, in violation of ORS 166.023; or
11. Disorderly conduct in the second degree, in violation of ORS 166.025

C. A person excluded from a public building under authority of this Section may not enter that public building except to travel to and from and be present at the events and locations listed below:

1. Attendance at a city commission meeting;
2. Attendance at a scheduled initial interview with a social service provider;
3. Compliance with court-or corrections-ordered obligations;
4. Contact with criminal justice personnel at a criminal justice facility;
5. Attendance at any administrative or judicial hearing relating to an appeal of:
  - a. that person's notice of exclusion; or
  - b. the denial, revocation, or amendment of the person's variance;
6. Satisfaction, or attempt to satisfaction of an essential need by accessing the public building that provides an essential need or service when the essential need cannot reasonably be satisfied by the excluded person without entering the public building;

7. Performance of work directly related to lawful employment;
  8. Presence at any place or event as specified by a variance issued by the Chief of Police or designee pursuant to 9.28.060 B.
- D. An exclusion is valid only if the person to be excluded received actual notice of the exclusion as required by 9.28.050.

**9.28.030 Violation of an exclusion - penalties.**

- A. It is unlawful for a person to enter or remain in a public building in violation of a valid exclusion imposed pursuant to this Code. For violation of this subsection, a court may impose a fine of no more than \$300.
- B. A person who enters or remains in a public building in violation of a valid exclusion issued pursuant to this Code is subject to arrest for Criminal Trespass (ORS 164.245).

**9.28.040 Issuance of Exclusion Notices.**

The Chief of Police and the designees of the Chief are the persons in charge of public buildings for purposes of issuing notices of exclusion in accordance with this Chapter.

**9.28.050 Procedure.**

- A. If a person is arrested and either cited to appear in court for charging or lodged in jail for presentation to a magistrate for charging based upon probable cause to believe that the person has committed any of the offenses enumerated in Subsection A. of Section 9.28.030 within a public building, the Chief of Police and/or designees may exclude that person from that public building. Every person excluded shall be provided a notice of exclusion and variances substantially similar to Exhibit A attached to this ordinance.
- B. At the time a person is issued a notice of exclusion from a public building, the Chief of Police and/or designees may discuss with the excluded person whether the person has a plausible need for a variance and may issue a variance pursuant to the process described in subsection B of Section 9.28.060.
- C. The notice of exclusion shall be in writing and a copy delivered to the excluded person. The notice of exclusion shall include the following:
1. An identification of the public building or buildings from which that person is excluded
  2. Information concerning the right to appeal the exclusion to the Municipal Court;
  3. Notice that conviction of the offense for which the person was arrested and excluded will result in a one-year exclusion; and
  4. Information concerning the right to appeal a conviction-based exclusion to the Municipal Court.

#### **9.28.060 Appeal, Review and Variances.**

A. A ninety (90) day exclusion shall take effect at 12:01 a.m. on the fifth day following issuance of the notice of exclusion and will remain in place for ninety days, so long as the person issued the notice of exclusion has not filed an appeal as provided in this Chapter.

B. If a person issued a notice of exclusion files an appeal as provided in this Chapter, imposition of a ninety (90) day exclusion shall be stayed pending a final, enforceable decision upholding the exclusion.

C. **APPEAL.** A person to whom notice of exclusion is issued shall have a right to appeal as follows:

1. Appeals shall be made to the Oregon City Municipal Court.

2. Copies of documents in the City's control that are intended to be used at the hearing shall be made available, upon request, to the appellant.

3. An appeal of a ninety (90) day notice of exclusion must be filed, in writing, by 5:00 p.m. of the fifth calendar day following issuance of the notice of exclusion.

4. An appeal of a one (1) year conviction-based exclusion must be filed, in writing, by 5:00 p.m. of the fifth business day following the date of conviction.

5. An appeal of:

a. a denial of a request for a variance; or

b. a denial of a request for an amendment to a variance; or

c. a revocation or amendment of a variance

must be filed, in writing, by 5:00 p.m. of the fifth business day following the action regarding the variance. Except as specifically provided in this section, all hearings described in this subsection shall be held on a *de novo* basis.

6. A ninety (90) day exclusion shall not take effect during the time that an appeal of the ninety (90) day exclusion is pending.

7. A one (1) year conviction-based exclusion shall take effect at 12:01 a.m. on the calendar day following the date of conviction and, notwithstanding an appeal of the exclusion, shall remain in effect unless the Municipal Court issues a contrary decision.

8. The hearing on an appeal of a ninety (90) day exclusion, the City shall have the burden to show by a preponderance of the evidence that the appellant committed any of the offenses enumerated in Subsection A. of Section 9.28.030, and that the conduct supporting the exclusion occurred within the public building.

9. At the hearing on an appeal of a one (1) year conviction-based exclusion, the City shall have the burden to show by a preponderance of the evidence that the appellant was convicted

of any of the offenses enumerated in Subsection A. of Section 9.28.030, and that the conduct supporting the conviction occurred within the public building.

10. At the hearing on an appeal of a denial of a request for a variance as provided in 9.28.060 C.5.a., the City shall have the burden to show by a preponderance of the evidence that the denial was in accordance with this Section.

11. At the hearing on an appeal of a denial of a request for an amendment to a variance as provided in 9.28.060 C.5.b., the City shall have the burden to show by a preponderance of the evidence that the denial was in accordance with this Section.

12. At the hearing on an appeal of a revocation or amendment of a variance as provided in 9.28.060 C.5.c., the City shall have the burden to show by a preponderance of the evidence that any of the conditions enumerated in this Section supporting revocation or amendment existed at the time of revocation or amendment.

13. At the hearing on an appeal of a ninety (90) day exclusion, the following shall be prima facie evidence that the exclusion was based on probable cause to believe that the appellant committed any of the offenses enumerated in Section 9.28.030 A.:

a. A determination by a court having jurisdiction over the offense that forms the basis for the exclusion, that probable cause existed to arrest the person to whom the initial ninety (90) day notice of exclusion was issued for violation of any of the offenses enumerated in Section 9.28.030 A.; or

b. An accusatory instrument charging the person to whom a ninety (90) day notice of exclusion was issued, for violation of any of the offenses enumerated in Section 9.28.030 A.

14. At the hearing on an appeal of a one (1) year conviction-based exclusion, a judgment of conviction for any of the offenses that formed the basis for the exclusion, as enumerated in Section 9.28.030 A., shall be conclusive evidence that the described conduct occurred, but, absent a finding of fact by the court of conviction, is not conclusive evidence that the conduct occurred in the public building.

D. VARIANCES. Variances modify an exclusion, and shall be granted, denied, amended or revoked in accordance with the following provisions:

1. All variances shall be in writing and shall state the purpose for which they are granted and the period of time during which they are effective. A variance that does not describe its period of effectiveness is effective for the duration of the exclusion. A variance allows relief from an exclusion only for specified locations, activities or events, and presence at specified locations, activities and events within a public building.

2. Variance. The Chief of Police and/or designees may, for any reason, grant an excluded person a variance from an exclusion at any time during an exclusion period. Except as described in 9.28.050 B., the Chief of Police and/or designees shall grant an appropriate variance to an excluded person who presents a plausible need to engage in any non-criminal activity that is not associated with the behavior supporting the person's exclusion. A variance granted under this Subsection allows the presence or activity in the public building only in accordance with the terms specified in the variance. The Chief of Police or designees shall

request a person seeking a variance to provide and update an address through which the person can be reached for the duration of the variance in the event the City determines there is a need to amend or revoke the variance.

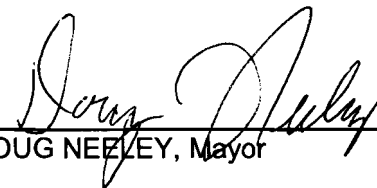
E. A variance may be revoked or amended for the following reasons:

1. The excluded person provided false information in order to obtain the variance;
2. There is probable cause to believe the person has committed any of the offenses enumerated in Section 9.28.030 A. subsequent to the issuance of the variance;
3. The circumstances giving rise to the issuance of the variance no longer support a continuation of the variance or a term thereof; or
4. If the person presents new circumstances that would support amending the variance.

F. A revocation or amendment of a variance becomes effective at 5:00 p.m. of the fifth business day following mailing of notice of the action to the excluded person at the address provided pursuant to 9.28.060 B.1. unless the excluded person appeals the determination by following the procedures in 9.28.060 A.5.c.

**Section 2.** Severability is intended throughout and within the provisions of this ordinance. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this ordinance.

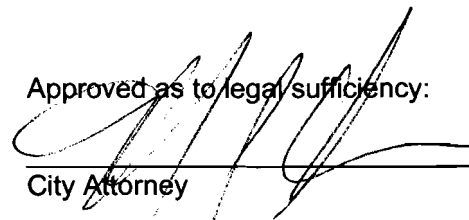
Read for the first time at a regular meeting of the City Commission held on the 15th day of December 2010, and the City Commission finally enacted the foregoing ordinance this 19th day of January 2011.

  
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DOUG NEELEY, Mayor

Attested to this 19th day of January 2011

  
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Nancy Ide, City Recorder

Approved as to legal sufficiency:

  
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City Attorney

ORDINANCE NO. 10-1013:

**EXHIBIT A - NOTICE OF EXCLUSION AND VARIANCE FORM**

Was NOT adopted at the City Commission meeting. If this exhibit is needed in the future it can be created then.